

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO
01-CV-12257-PBS AND 01-CV-339

PLAINTIFFS' REPORT ON THE STATUS OF DISCOVERY

On August 15, 2003, the Court issued Case Management Order [7] ("CMO 7"), which, among other things, outlined the scope of discovery that plaintiffs would be permitted to conduct pending the Court's decision on the outstanding motions to dismiss. More specifically, the Court ordered that plaintiffs were permitted to conduct discovery in the following limited circumstances: (i) the defendant is **named** in the Master Consolidated Class Action Complaint ("MCC") (as opposed to the Amended Master Consolidated Class Action Complaint, or "AMCC"); (ii) that defendant was **not** dismissed as to **both** Class 1 and Class 2 claims; (iii) if the discovery relates to a specific drug, the drug must be identified in the defendant-specific allegations of the MCC **and** the MCC must identify a specific plaintiff who purchased the drug; and (iv) no discovery is permitted on multi-source drugs. CMO 7 at 2.

The Court also ordered all non-dismissed defendants to "supplement their document productions under the order of this Court dated October 28, 2002 (relating to the production of documents produced to governmental bodies concerning AWP matters) by producing all

documents produced by a non-dismissed defendant in response to recent subpoenas issued by the House Energy and Commerce Committee, or any other governmental body" CMO at 2-3.

The Court also directed defendants to produce this category of documents within 30 days. *Id.*

Based on both plaintiff's review of CMO 7 and on meet and confers held with certain defendants, the following chart summarizes plaintiffs' understanding of the additional discovery that will be conducted into each defendant pending the outcome of the motions to dismiss:

DEFENDANT	DRUG(S)	MUST SUPPLEMENT GOV'T PRODUCTION ¹	NOTES
Abbott	None	Yes	
Amgen	None	No*	No discovery under the terms of CMO 7.
AstraZeneca	Zoladex	No	Agreement as to discovery has been reached.
Aventis Group		Yes	Agreement on discovery as to Aventis's parent owner has been reached, but none as to Aventis Behring.
Baxter	None	No (has not received a subpoena from any other governmental body)	No discovery under the terms of CMO 7.
Bayer	None	No*	No discovery under the terms of CMO 7.
Boehringer Group	None	No	
B. Braun	None	No	
BMS Group		Yes	Agreement as to discovery has been reached.
Dey	None	Yes	Dispute as to whether Dey must supplement

¹ As noted earlier, CMO 7 requires *every* non-dismissed defendant to supplement their document productions under the Court's October 28, 2002 Order and provide plaintiffs with documents produced pursuant to a subpoena from *any* governmental body, including but not limited to the House Energy and Commerce Committee. Nonetheless, this column references only those defendants who received a subpoena from the House Energy and Commerce Committee, because defendants, but not plaintiffs, will be aware of the existence of other subpoenas.

			governmental productions; parties still conferring.
Fujisawa	None	No	Has not received a subpoena from the House E&C Committee but has received one from California and is required to produce here those documents provided in response to the California subpoena.
GSK Group		Yes	Agreement as to discovery has been reached.
Hoffman La Roche	None	No*	No discovery under the terms of CMO 7.
Immunex	Novantrone	No	The parties are still discussing the scope of discovery.
Johnson & Johnson	Remicade	No*	Agreement as to discovery has been reached.
Novartis	None	No	No discovery under the terms of CMO 7.
Pfizer	None	No*	No discovery under the terms of CMO 7.
Pharmacia Group	None	Yes	
Schering-Plough Group	None	Yes	
Sicor Group	None	No*	No discovery under the terms of CMO 7.
Tap	None	No	No discovery under the terms of CMO 7.
Watson	None	Yes	

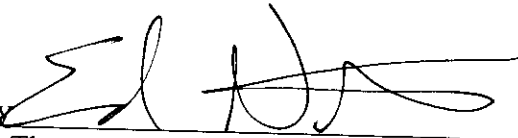
* These defendants have been subpoenaed by the House Committee on Energy and Commerce but were dismissed from this action by the Court's May 13, 2003 Order.

In sum, with respect to discovery into specific drugs, discovery will proceed on only three drugs, in addition to the small handful of drugs for which Aventis, BMS and GSK will produce information,² out of the universe of the approximate 319 drugs identified in the AMCC and the 178 drugs identified in the MCC. Thus, discovery will remain limited until the pending motions to dismiss are resolved or the Court orders otherwise.

² Under the terms of the discovery agreements reached with these three defendants, each defendant requested that the drugs not be identified, and plaintiffs are honoring those requests.

DATED: August 29, 2003.

By



Thomas M. Sobol (BBO# 471770)
Edward Notargiacomo (BBO# 567636)
Hagens Berman LLP
225 Franklin Street, 26th Floor
Boston, MA 02110
Telephone: (617) 482-3700
Facsimile: (617) 482-3003

LIAISON COUNSEL

Steve W. Berman
Sean R. Matt
Hagens Berman LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

Samuel D. Heins
Brian L. Williams
Heins, Mills & Olson, P.C.
700 Northstar East
608 Second Avenue South
Minneapolis, MN 55402
Telephone: (612) 338-4605
Facsimile: (612) 338-4692

Jeffrey Kodroff
John Macoretta
Spector, Roseman & Kodroff, P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300
Facsimile: (215) 496-6611

**CHAIRS OF LEAD COUNSEL
COMMITTEE**

Marc H. Edelson
Hoffman & Edelson
45 West Court Street
Doylestown, PA 18901

Telephone: (215) 230-8043
Facsimile: (215) 230-8735

Kenneth A. Wexler
Elizabeth Fegan Hartweg
The Wexler Firm
One North LaSalle Street, Suite 2000
Chicago, IL 60602
Telephone: (312) 346-2222
Facsimile: (312) 346-0022

**MEMBERS OF LEAD COUNSEL
COMMITTEE AND EXECUTIVE
COMMITTEE**

Michael McShane
Alexander, Hawes & Audet, LLP
300 Montgomery Street, Suite 400
San Francisco, CA 94104
Telephone: (415) 982-1886
Facsimile: (415) 576-1776

Robert E. Piper, Jr.
Piper & Associates
624 Pierre Avenue
Shreveport, LA 71103
Telephone: (318) 226-0826
Facsimile: (318) 424-9900

**MEMBERS OF EXECUTIVE
COMMITTEE**

Anthony Bolognese
Bolognese & Associates
One Penn Center
1617 JFK Boulevard, Suite 650
Philadelphia, PA 19103
Tel: (215) 814-6750
Fax: (215) 814-6764

Michael J. Flannery
Carey & Danis, LLC
676 North Michigan Ave., Suite 3110
Chicago, IL 60611
Tel: (312) 649-0100
Fax: (312) 664-7731

Jonathan W. Cuneo
The Cuneo Law Group
317 Massachusetts Ave. N.E., Suite 300
Washington, D.C. 20002
Tel: (202) 789-3960
Fax: (202) 789-1813

Neal Goldstein (Of Counsel)
Freedman & Lorry, PC
400 Market Street, Suit 900
Philadelphia, PA 19106
Tel: (215) 925-8400
Fax: (215) 925-7516

Michael E. Criden
Hanzman & Criden, PA
Commerce Bank Center, Suite 400
220 Alhambra Circle
Coral Gables, FL 33134
Tel: (305) 357-9000
Fax: (305) 357-9050

Blake M. Harper
Kirk B. Hulett
Hulett Harper LLP
550 West C Street, Suite 1700
San Diego, CA 92101
Tel: (619) 338-1133
Fax: (619) 338-1139

Jonathan D. Karmel
Karmel & Gilden
221 N. LaSalle Street
Suite 1414
Chicago, IL 60601
Tel: (312) 641-2910
Fax: (312) 641-0781

G. Mark Albright
Albright, Stoddard, Warnick & Albright
Quail Park 1, Building D-4
801 South Rancho Drive
Las Vegas, NV 89106

Dianne M. Nast
Roda & Nast, PC
801 Estelle Drive
Lancaster, PA 17601
Tel: 717-892-3000
Fax: 717-892-1200

Henry H. Rossbacher
Rossbacher & Associates
811 Wilshire Boulevard,
Suite 1650
Los Angeles, CA 90017-2666
Tel: (213) 895-6500
Fax: (213) 895-6161

Jonathan Shub
Sheller, Ludwig & Badey, P.C.
1528 Walnut Street, 3rd Floor
Philadelphia, PA 19102
Tel: (215) 790-7300
Fax: (215) 546-0942

Scott R. Shepherd
Shepherd & Finkleman, LLC
117 Gayley Street, Suite 200
Media, PA 19063
Tel: (610) 891-9880
Fax: (610) 891-9883

Lee Squitieri
Squitieri & Fearon
521 Fifth Avenue, 26th floor
New York, NY 10175
Tel: (646) 487-3049
Fax: (646) 487-3095

Lisa J. Rodriguez
Ira Neil Richards
Trujillo Rodriguez & Richards, LLC
The Penthouse
226 West Rittenhouse Square
Philadelphia, PA 19103
Tel: (215) 731-9004
Fax: (215) 731-9044

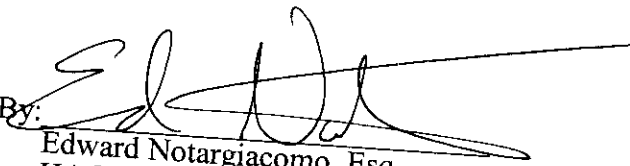
Mitchell A. Toups
Weller, Green, Toups & Terrell, L.L.P.
2615 Calder Street, Suite 400
P.O. Box 350
Beaumont, TX 77704
Tel: (409) 838-0101
Fax: 409-838-6780

Damon Young
Lance Lee
Young, Pickett & Lee
4122 Texas Boulevard
P.O. Box 1897
Texarkana, AR/TX 75504
Tel: (903) 794-1303
Fax: 903-792-5098; 903-794-5098

**ADDITIONAL ATTORNEYS FOR
PLAINTIFFS**

CERTIFICATE OF SERVICE

I hereby certify that I, Edward Notargiacomo, an attorney, caused true and correct copy of the foregoing Plaintiffs' Report on the Status of Discovery, to be served on all counsel of record electronically, pursuant to Section D of Case Management Order No. 2., this 29th day of August, 2003.

By: 
Edward Notargiacomo, Esq.
HAGENS BERMAN LLP
225 Franklin Street, 26th floor
Boston, MA 02110
(617) 482-3700